IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RAY BROWN and
KENJI AUSBORN,

Plaintiffs,

vs. NO. CV 10-81 JOB/ACT

DANIEL MONTOYA, DANIEL DOUGHERTY,
SUSAN BARELA, TROY RUPLINGER,
LIZ AGUILAR, MANUEL GONZALES III,
in their individual capacities,
DAN HOUSTON, in his official capacity as
BERNALILLO COUNTY SHERIFF,
GREGG MARCANTEL, in his official capacity as
SECRETARY OF CORRECTIONS,
GORDON E. EDEN, JR., in his official capacity as
SECRETARY OF THE DEPARTMENT OF
PUBLIC SAFETY, and
JOHN DOES 1-50,

DEFENDANT HOUSTON'S RESPONSE REGARDING THE TIMELINESS OF PLAINTIFFS' MOTION TO COMPEL ANSWERS AND RESPONSES TO PLAINTIFFS' FIRST SETS OF REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION TO DEFENDANTS MONTOYA, BARELA, HOUSTON, MARCANTEL, AND EDEN

COMES NOW Defendant Sheriff Dan Houston , by and through his counsel, Jonlyn M. Martinez, Law Office of Jonlyn M. Martinez, LLC, and hereby submits his Response Regarding the Timeliness of Plaintiff's Motion to Compel Answers and Responses to Plaintiffs' First Sets of Requests for Admission, Interrogatories, and Requests for Production, as follows:

ARGUMENT

Plaintiffs initially served their First Set of Discovery, which included Requests for Admission, Interrogatories, and Requests for Production of Documents pursuant to, respectively, Rule 36, 33 and 34 of the Federal Rules of Civil Procedure ("FRCP") on July 30, 2012. On

August 29, 2012, Defendant Houston timely served his Responses and Objections to same. [Doc. No. 102] The substance of these Responses are attached to the instant Motion, which was not filed until September 28, 2012. [Doc. 110-1]

The applicable local rule provides as follows:

> 26.6. Objections to Discovery. A party served with objections to:
>
> - an interrogatory;
> - request for production or inspection; or
> - request for admission
>
> must proceed under D.N.M.LR-Civ. 37.1 within twenty-one (21) days of service of an objection unless the response specifies that documents will be produced or inspection allowed. In this case, the party must proceed under D.N.M.LR-Civ. 37.1 within twenty-one (21) days after production or inspection of the documents.
>
> Failure to proceed within this time period constitutes acceptance of the objection. For good cause, the Court may, sua sponte or on motion by a party, change the twenty-one (21) day period.

D.N.M.LR-Civ Rule 26.

It is clear that Plaintiff has not complied with the stated time period for a Motion to Compel. While there were two Requests—Nos. 2 and 3—where documents were to be provided subsequent to the initial Response date of August 29, 2012, this is not a ground for extending the time as to all of the discovery requests, including those brought under different rules, nor have Plaintiffs cited to any authority establishing that it should. Further, the production of those documents was in fact made on September 5, 2012, which would still render the instant Motion untimely. The only production made thereafter was a color copy of a document already produced, which surely is not a ground for further extending the time limits herein.

Defendant submits that the time period established in the local rule should not be blithely disregarded. If Plaintiffs' counsel needed more time in order to explore good faith resolution of these matters with this or other Defendants, additional time should have been sought—but it was not. There is no basis for extending the time period related to Defendant's discovery responses herein, so Defendant did not want to expend taxpayer money researching and responding to same; however, in the event this Court allows this Motion to proceed, Defendant respectfully requests additional time to address the merits of Plaintiffs' contentions.

CONCLUSION

For all of the foregoing reasons, Defendant submits that no further response to this Motion is necessary given that it is untimely under the local rules; in the event this Court should determine that this Motion should be addressed on the merits, Defendant respectfully requests fourteen (14) days in which to do so.

Respectfully submitted,

LAW OFFICE OF JONLYN M. MARTINEZ, LLC

By Filed electronically October 14, 2012

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I hereby certify that a copy of the foregoing pleading was served by the Court's CM/ECF system to all counsel of record on October 14, 2012:

/s/